

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

MICHELLE STRANGER,

Plaintiff,

vs.

No. CIV 05-632 JB

CHECKER AUTO PARTS,

Defendant.

MEMORANDUM OPINION AND ORDER

THIS MATTER comes before the Court on the Plaintiff's Motion to Continue Hearing on Motion to Compel, filed February 27, 2006 (Doc. 31). The Court held a hearing on this motion on February 27, 2006. The primary issue is whether the Court should continue the hearing on Defendant CSK Auto, Inc.'s¹ Motion to Compel Plaintiff's Response to Discovery and for Rule 37(c) Sanctions, currently set for 10:00 a.m. on February 28, 2006, because Plaintiff Michelle Stranger's counsel will be in trial for a civil matter beginning at 8:30 a.m. in state court. Consistent with the Court's ruling at the hearing on this motion, and for the reasons given at the time of the hearing, and because Stranger has shown good grounds for a continuance, the Court will grant the motion.

PROCEDURAL BACKGROUND

Stranger moves the Court for an order continuing the hearing on the motion to compel. See Motion to Continue Hearing on Motion to Compel at 1. Stranger's counsel will be in the Thirteenth Judicial District Court before the Honorable George E. Eichwald, District Judge and expects the trial

¹ The Complaint lists the Defendants as Checker Auto Parts. See Complaint for Sexual Harassment (Quid Pro Quo), filed June 5, 2005 (Doc. 1). The Defendants, however, assert that it is misnamed in the Complaint and that their true identity is CSK Auto, Inc. See Answer to Complaint for Wrongful Discharge at 1, filed September 21, 2005 (Doc. 4).

to continue until March 3, 2006. See Clarissa Hastings v. Board of Education of Rio Rancho Public Schools, Case No. D1329 CV-04-0359 (13th Jud. Dt. Ct. N.M.); Motion to Continue Hearing on Motion to Compel ¶ 1, at 1. CSK Auto, Inc. (“CSK”) opposes this motion. See Motion to Continue Hearing on Motion to Compel at 1; Defendant’s Response to Plaintiff’s Second Motion to Continue Hearing on Motion to Compel at 4, filed February 27, 2006 (Doc. 32).

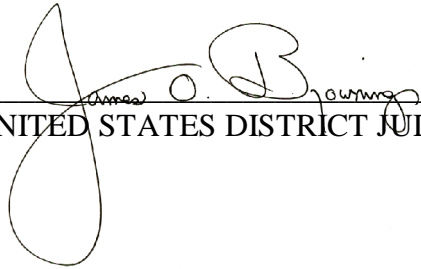
CSK contends that the motion should be denied because: (i) a previous hearing on this motion was set for February 16, 2006, and Stranger waited until less than 24 hours before that hearing to file a motion to continue, which motion the Court granted; (ii) a hearing on this motion was then set for February 28, 2006, and Stranger did not request a continuance from CSK until 2:00 p.m. on February 27, 2006; (iii) Stranger’s counsel has been aware of the trial date for Hastings v. Board of Education of Rio Rancho Public Schools since September 27, 2005; (iv) discovery is set to end on April 7, 2006, and a continuance would result in CSK receiving complete answers to its initial written discovery requests no earlier than March 20, 2006, less than two weeks before the close of discovery; (v) CSK will not be able to begin the process of collecting medical provider records and employment records until March 20, 2006; and (vi) motions are due May 7, 2006, the Pretrial Conference is scheduled for June 30, 2006, a Jury Trial is scheduled for July 10, 2006, and a delay will prejudice CSK’s ability to prepare for trial within the Court’s schedule. See Defendant’s Response to Plaintiff’s Second Motion to Continue Hearing on Motion to Compel at 1-4.

ANALYSIS

Consistent with the Court’s ruling at the hearing on this motion, and for the reasons given at the time of the hearing, the Court will grant the motion. Stranger’s counsel has a trial scheduled to begin on the date of the hearing before this Court, and thus has shown good cause for a continuance.

Additionally, the Court can eliminate at least some of the prejudice caused by delay to CSK by modifying and extending the Court's existing schedule if necessary. The Court can address such modifications and extensions at the hearing on the underlying motion to compel.

IT IS ORDERED that Plaintiff Michelle Stranger's Motion to Continue Hearing on Motion to Compel is granted.


UNITED STATES DISTRICT JUDGE

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